REMARKS

Claims 1-3 and 9 have been canceled. Claims 4-7 have been previously withdrawn. Claims 8, 11 and 12 are amended. Claims 8, 10-12 remain in the application.

Claims 1-3 were rejected under 35 U.S.C. §102(b) as being unpatentable over Robache (5,603,203). The Applicant has canceled these claims; therefore, this rejection is now moot.

Claims 1-3 and 8-12 were rejected under 35 U.S.C. §103(a) as being unpatentable over Robache (5,603,203). The Applicant has canceled claims 1-3 and 9, therefore, this rejection is now moot with respect to those claims. The Applicant respectfully traverses this rejection with respect to claims 8 and 10-12.

U.S. Patent Number 5,603,203 to Robache discloses a process and apparatus for handling a food, chemical or pharmaceutical product. The apparatus 1 includes a first zone 4 that receives a thermoplastic strip from roll 2, and preheats the strips. At zone 5, the preheated strip is thermoformed into a tray having a recess and associated cover. At the next zone 10, 11, the recesses are filled with the product. In zone 12, the filled recess is closed by a second film unrolled from the second roll 3 and welded to the tray. At the outlet of zone 12 is a cutting station 13 for cutting out the first strip 2. At station 15, a label, mark or indicia is applied to the welded diaphragm that permits identification of the product. Likewise, the indicative labels can be applied to the cover before cover is thermowelded. Alternatively, the label can be integral with the cover, so that the contents are known even after the film is torn off the tray. Robache '203 does not disclose a method of forming a flexible pouch for a product having a dimple with a parabolic shape within a circular locating indicia, as disclosed by the Applicant.

In contradistinction, claim 8 as amended discloses a method of forming a flexible pouch for a product having a straw pierceable dimple. The method includes the steps of providing a web of material having a registration mark, and a locating indicia for identifying a straw pierceable portion of the flexible pouch. The locating indicia is circular in shape. The web is indexed at a molding station using the registration mark and the locating indicia. The molding station includes a male mold element having a heated rod and an opposed female mold element having a parabolic cavity. The male mold element and female mold element are centered within the locating indicia. At the molding station, a dimple having a parabolic shape is molded within the locating indicia in the web of material by compressing the web of material between the male mold element and the female mold element and applying heat. The cross-sectional thickness of the dimple within the locating indicia is less than the cross-sectional thickness of the web of material outside the locating indicia. The method also includes the steps of forming the flexible pouch from the web of material. The flexible pouch has an upper edge, a lower edge, and side edges. The straw pierceable dimple is positioned near the upper edge of the flexible pouch, for accessing the product contained in the pouch with a straw. Claim 12 is similar to claim 8, and includes further limitations.

Robache '203 does not teach or otherwise suggest the claimed invention of claim 8. Specifically, the Robache '203 reference merely discloses a method of forming a rigid container using two rolls of different material, and one roll forms a recess and cover connected to the recess by a hinge, and the second roll forms a film enclosing the recessed portion. Robache '203 does not disclose a method of forming a flexible pouch using a roll of one flexible moldable material, and the material is used to form a pouch having flexible walls, as disclosed by the Applicant.

Robache '203 teaches that the locating indicia is used by the consumer to identify the product. Robache '203 does not teach that the locating indicia is circular in shape, and the mold element is positioned so as to form the dimple within the locating indicia during the manufacturing process, as taught by the applicant.

Robache '203 teaches that the shape of the tray is formed from the first roll of material using thermoforming. In particular, Robache teaches that a ballooning technique is preferably utilized to obtain vertical walls of regular shape with conditioning tray corners of thickness sufficient to avoid any ultimate piercing (column 3, line 66 to column 4 lines 1-3). Clearly, Robache teaches away from the present invention, since Robache teaches that the walls are rigid and have a thickness to avoid piercing. This is contrasted with the present invention, whereby the walls of the pouch are flexible, the dimple is a thin walled portion located near the upper edge of the pouch, and the product is accessed by piercing the dimpled portion with a straw. The Examiner suggests that the recess portion of Robache is the same as the straw-pierceable dimple taught by the applicant. Clearly, the recess portion of Robache contains the product, and the recess portion is not located within a locating indicia or is pierceable by a straw.

The Examiner further suggests that the dimple formed as a hinge between the cover and recess is a straw-pierceable dimple. Clearly, the dimple formed by the hinge is not in a wall of the pouch and does not project inwardly to form a straw-pierceable portion for accessing the product contained in the pouch, as taught by the applicant: Likewise, the dimple used as a locking means of the cover to the recess does not project inwardly to form a straw-pierceable portion for accessing the product contained in the pouch, as taught by the applicant. Even assuming that these dimples taught by Robache are pierceable, they are not located in a wall of pouch, and near an upper edge and would not provide direct access to the product.

The Applicant submits that there is no teaching in the prior art cited by the Examiner to suggest the method of forming a flexible pouch having a straw pierceable dimple located within a locating indicia and having a parabolic shape projecting into the wall of the container. The art of providing a flexible pouch is well developed, and as such, advances are narrow, but still novel. The Applicant provides a new and novel flexible pouch that is easier to manufacture and open.

The cited reference does not render obvious the Applicant's invention, because of the novel features of the flexible pouch formed using the method described by the applicant. Further Robache is solving a different problem than that solved by the Applicant. Robache teaches a method for forming a rigid container having a recessed portion for the product and a cover hingeably connected to the recessed portion and a second cover welded to the recessed portion. The Applicant teaches a method of forming a flexible pouch having a straw-pierceable dimple formed within a locating indicia in the wall of the pouch, and near an upper edge of the pouch, for accessing the product contained within the pouch. It is respectfully submitted that the Examiner's stated conclusion of obviousness is based on speculation and hindsight reconstruction of the claimed invention from teachings in the prior art.

The cited reference does not teach or suggest all of the claim limitations taught by the Applicant. Therefore, it is respectfully submitted that claims 8 and 12 and the claims dependent therefrom are in a condition for allowance, which is solicited. If the Examiner finds to the contrary, it is respectfully requested that the undersigned in charge of this application be called at the telephone number given below to resolve any remaining issues.

Respectfully submitted,

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